RECENT CASES

ASSAULT AND BATTERY—PROVOCATION—MITIGATION.—BAUMGARTUER V. HODGDON, 116 N. W. 1030 (MINN.).—In an apparently friendly discussion as to the merits of a certain horse, carried on by the parties to this action and others,the plaintiff, in a good-natured way, remarked either that the defendant had "a thing of a horse," or that the horse was 'the damnedest looking horse" plaintiff ever saw. Whereupon, defendant flew into a passion and violently assaulted plaintiff, inflicting serious injuries to his person. *Held,* that the Trial Court in charging the jury that neither remark could be considered in mitigation of damages, committed no error.

Mere words spoken, however much they may be calculated to excite and irritate, do not justify an assault and battery. *Richardson v. Zuntz,* 26 La. Ann. 313. But they may constitute a ground for the reduction of damages. *Donnelly v. Harris et al.,* 41 Ill. 126; *Byers v. Horner,* 47 Md. 23. To be within this class, the words relied on must be such as to induce a presumption that the violence done was committed under immediate influence of the feelings and passions excited by them. *Chandler v. Newton,* 13 Ky. Law. Rep. 927; *Butt v. Gould,* 34 Ind. 552. In addition to the foregoing, it is essential that the words relied on must be such as to heat the blood or arouse the passions of a reasonable man. *Daniel v. Giles,* 108 Tenn. 242.

BIGAMY—INTENT—PEOPLE V. SPOOR, 85 N. E. 207 (ILL.).—*Held,* that in a prosecution for bigamy, a *bona fide* belief in the death or divorce of the first wife is no defense, as the criminal intent is inferred from the criminality of the act itself. Vickers, J., *dissenting.*

It is laid down in *Reynolds v. U. S.,* 98 U. S. 145, that ignorance of fact but not of law, may tend to show lack of criminal intent. That ignorance of law is no defence is well settled. *State v. Robins,* 28 N. C. 23; *In re Ven Pelt,* 1 City Hall Rec. 137. But as regards ignorance of fact as a defence to a prosecution for bigamy, the cases are in irreconcilable conflict. In England, it is well settled that on the principle of *actus non facit reum nisi meus sit rea,* an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent one, is a good defense. *Hearne v. Garton,* 2 E. & E. 66. Some states in this country have adopted a like view. *Squire v. State,* 46 Ind. 459; *State v. Stank,* 9 Ohio Dec. 8. But in Massachusetts the English doctrine is repudiated, it being declared that the crime consists of doing the unlawful act, and criminal intent is not essential. *Commonwealth v. Hayden,* 163 Mass. 453. To the same effect are *Dotson v. State,* 62 Ala. 141; *State v. Hughes,* 58 Ia. 165.

BAILMENT—ACTIONS—PRESUMPTIONS AND BURDEN OF PROOF.—JOHNSON V. PERKINS, 62 S. E. 152 (GA.).—*Held,* that in all cases of bailment, after proof of loss, the burden of proof is on the bailee to show diligence.

The general rule in actions of negligence is that the burden is on the

plaintiff, not only to show an injury done him by the defendant, but also to show that it was due to the defendant's negligence. *Turtellot v. Rosebrook,* 11 Met. 460. But the amount of evidence necessary to make out a *prima facie* case differs according to the circumstances. *Cooley on Torts,* Vol. 2, p. 1414. In actions against bailees based on negligence, it is held by some authorities that the mere proof of loss or injury does not alone make out a *prima facie* case, but that the plaintiff must prove that loss was due to the neglect of the bailee. *Story on Bailments,* § 410; *Cross v. Brown,* 41 N. H. 283; *Brown v. Johnson,* 29 Tex. 43. The weight of authority, however, holds that in such cases a failure to fulfill a duty by a bailee or an injury done in fulfilling it makes out a *prima facie* case and shifts the burden of proceeding to the defendant. *Boise v. Hartford and N. H. R. Co.,* 37 Conn. 272; *Stewart v. Stone,* 127 N. Y. 500. Following this rule, the Georgia Code, § 2896, provides that "in all cases of bailments after proof of loss, the burden of proof is on the bailee to show proper diligence." *Cent. R. R. Co. v. Anderson,* 58 Ga. 393.

CARRIERS—LIABILITY OF CARRIER—DUTY OF SHIPPER TO INSPECT CAR.—CLEVELAND, C., C. & ST. L. RY. CO. v. LOUISVILLE TIN & STOVE CO., 111 S. W. 358 (KY.).—*Held,* that it is not the duty of a shipper to inspect a car furnished by a carrier, or to exercise care to know whether the car is in condition; but he may assume that the carrier would not have directed the placing of the goods in the car unless it was suitable.

The duty to inspect vehicles of conveyance lies upon the carrier. *Empire Transp. Co. v. Wamsutta Oil Co.,* 63 Pa. St. 14, and it is an insurer as against such perils as arise from the use of defective or inadequate instruments of carriage. *Terre Haute & I. R. Co. v. Crews,* 53 Ill. App. 50; *Costigan v. Michael Transp. Co.* 33 Mo. App. 269. The weight of authority is that it may be relieved of this responsibility as insurer when the shipper retains an inspector to select and approve the cars to be used. *Carr v. Schafer,* 5 Colo. 48; and when there is a distinct contract relieving from such liability. *Gage v. Tirrell,* 91 Mass. 299; *South & N. A. R. Co. v. Wood,* 66 Ala. 167. But it has been held that a mere provision in a contract of carriage accepting car is not sufficient to waive defect. *Wallingford v. Columbia & G. R. Co.,* 26 S. C. 258. And, likewise, the mere knowledge by the shipper of unsuitable condition of car is insufficient to relieve carrier. *Pratt v. Ogdensburg & L. C. R. Co.,* 102 Mass. 557; *Schwinger v. Raymond,* 83 N. Y. 192.

CARRIERS—VALIDITY OF EXPRESS RECEIPTS—EXEMPTIONS FROM LIABILITY.—GREEWALD V. WEIR, 111 N. Y. SUPP. 235—The Interstate Commerce Act of Feb. 4, 1887, provides that any carrier shall be liable for the loss of property, and that no contract shall exempt such carrier from the liability thereby imposed. In an action brought under this act, *held,* that the clause in an express receipt, attempting to limit the carrier's liability to $50.00, or to exempt it from all liability in excess of that sum was void. Dayton, J., *dissenting.*

A carrier and the shipper may agree upon the value of the property to be shipped and limit the liability of the carrier accordingly. *Coupland v. Housatonic R. R. Co.,* 61 Conn. 531; *Groves v. Lake Shore & Michigan*